

(Spl. - H.C.A.S. C.D., 78-e)

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI - GOA
APPELLATE SIDE
WRIT PETITION NO. 308/2004

Office Notes, Office Memoranda of Quorum
appearances, Court's orders, or directions and
Registrar's orders.

Court's or Judge's Orders.

Mr. J. Godinho, Advocate for the
petitioner.

CORAM : P.V. HARDAS, J.

DATE : AUGUST 26, 2004.

P.C.

This is a petition by the
petitioners who are the original
plaintiffs in Regular Civil Suit
No.41/97/D, pending on the file of the
Civil Judge, Jr. Division, at Vasco da
Gama, Goa. The petitioners are
aggrieved by an order of the trial Court,
dated 20/03/2004, whereby, the trial
Judge after recasting issue No.2, has
referred the said issue to the
Mamlatdar and has recalled its earlier
order of referring the issue No.2, as it
originally stood. Issue No.2 reads as

under :

“2) Whether the defendant proves that he along with his brother Khushali Satarkar were/are the agricultural tenants in possession of the suit property ?”

2. The plaintiffs had filed a suit alleging that the defendants were not the tenants and the defendants, in their written statement, had specifically raised a plea that they were the agricultural tenants. Based on the pleadings, the trial Court had earlier framed Issue No.2 and referred to the Mamlatdar. However, on recasting the issue, the trial Court recalled its earlier order and had referred the said issue No.2, which is referred to above, to the Mamlatdar for decision. It is this order which is impugned in the present petition.

3. Obviously, since issue No.2 has been framed whether the defendants are agricultural tenants, the Civil Court

could not decide the said issue as the Civil Court does not have the jurisdiction to decide whether the defendants are the agricultural tenants. The trial Court has rightly adopted the procedure of referring the issue to the Mamlatdar for decision.

4. In view of the above, I do not find any infirmity in the Order passed by the trial Court, warranting interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. Therefore, this petition, being devoid of any merit, is dismissed with no order as to costs.

P.V. HARDAS, J.

ssm.

